What are Indigenous water rights?

- Colonial interpretation
  - Right to land, and adjacent water, for traditional uses
  - Implication: How to prove rights exist?

- Traditional understanding
  - Integral part of their sense of community
  - Access to water reaches a different, quasi-spiritual, degree of importance when indigenous communities' are involved
  - Struggles for rights and recognitions are tied directly to resource, land, and environmental claims
Outline

- History of Indigenous water rights (Global Context)
- Political Landmarks
- Socio-Cultural Understanding
- Economics
- Geopolitical Context Case Study: New Zealand
- Sociopolitical Context Case Study: Bolivia

History of Indigenous Water Rights

Inca Gunter

1. Colonization and Globalization
2. Various Manifestations and Global Context
3. Present and Future
Colonization and Globalization

- Traditional management of natural environment
- Assertion of colonist authority
  - Settler colonialism
  - Unceded land and adjacent water
    - Law of Nations
    - Terra Nullius
    - Manifest Destiny
- Violation of water rights
- Based on colonial policies and doctrine of discovery

Various Manifestations

- Effects of Colonization manifest themselves in various ways
- Indigenous water rights as global concept
  - Importance of international perspectives
- Results in:
  - Contaminated water - non potable
  - Shortages and Diversions
  - Threatened cultural practices
  - Forced moving of original inhabitants away from traditional water bodies
  - Lack of autonomy and involvement in decision making
- These represent infringements on Indigenous water rights.
Present and Future

- Currently...
- Implications
  - Limits of recognition in the context of settler colonist societies
- Looking forward…
  - Empowering shift toward decolonization
  - Alternatives to state structures and discourses
  - Emphasis on Indigenous resurgence and self determination
  - Regenerative Refusal
  - Legal traditions

https://www.upress.umn.edu/book-division/books/red-skin-white-masks


Political Issues of Indigenous Water Governance

Mark Castonguay

1. The Political Ontologies of Water
2. The United Nations Declaration on the Rights of Indigenous People
3. Interpreting Aboriginal Title and Rights
4. Collaboration Vs. Co-Governance
The Political Ontologies of Water

- Hegemonic water ontology entrenched in settler-colonial situations
- Considering alternate water ontologies
  - Rejecting Anthropocentrism
- A political opportunity to reform Water Governance

Photo Source: Water is Medicine: Reimagining Water Security through Tr’ondëk Hwëch’in Relationships to Treated and Traditional Water Sources in Yukon, Canada
UN Declaration on the Rights of Indigenous People

- Recognition of land, territories, and resources
  - Is water included?
- The principles of Free Prior Informed Consent
- Leverage in the protection of Indigenous ownership and control over water

Photo Source: https://infographic.tv/map-how-each-country-voted-for-the-un-declaration-on-the-rights-of-indigenous-peoples/
Interpreting Aboriginal Title and Rights

- Is water included in Aboriginal Title?
- Indigenous perspectives of Aboriginal Title
- The Failures of British Columbia’s new Water Sustainability Act
  - First in Time, First in Right
Collaboration Vs Co-Governance

- The significance of consultation
- The prospects of co-governance
- Persisting issues:
  - Reinforcing power imbalances
  - The subordination of Indigenous Knowledge

References


Social Perspective on Indigenous Water Governance

Yevgen Stets
Context

  - Canada abstained from voting
- No national standards for drinking water

- Water as sacred aspect of culture
  - National violation:
    - 49 First Nations communities exposed to high risk drinking water
    - Over 100 communities face ongoing water advisories
Health Impact

- Higher levels of waterborne disease
- Disproportionately higher levels of suicide

- Great Lakes Basin Indigenous communities
  - Increased incidence of:
    - Cancer
    - Birth defects
    - Diabetes
    - Chemical sensitivities
Recognition & Implementation

- Recognition leads to:
  - Accountability
  - Remedies
  - Non-discrimination

- EAGLE Project - Effects on Aboriginals in the Great Lakes Environment
- Sustainability over Short-term Benefits
Echoes of Colonialism

- Collaborative decision-making process as ideal
  - First Nations prevented from participation (historically)
  - First in Time, First in Rights water licensing scheme

- Local/Traditional Ecological Knowledge vs. Power Disparity
  - Knowledge integration inequality
  - Battle of discourses

- Authority over geographical and spatial narratives


Economics of Indigenous Water Governance

Rachel Jang
What are the economic reasons Indigenous peoples do not govern their own water?
1. Colonial Legacies: State assumes ownership of water

a) Decisions and policies tailored to economic growth
b) Increasing number of developments
c) Lack of treaties → Land & resources owned by the State
d) Developer incentive
2. Marginalized Indigenous Voice

a) Differences in governance systems (eg. environmental, spiritual)

b) Issues of “stakeholder” recognition, rather than “nation”

c) Shift from Sustainable Trading Economy to Capitalist Economy
Geopolitical Context

Case study: New Zealand

Amanda Chambers

1. The Māori
2. Treaty of Waitangi
4. Whanganui River Personhood
5. Te Waihora and Joint Management
6. Property Rights, Globalization, and Regulation

Photo source:
The Māori

- The tangata whenua (Indigenous peoples) of New Zealand, arrived 1000+ years ago from Polynesia
- Make up between 6-7% of total population

Beliefs and way of life:

- Water and water bodies as living beings
  - The beginning of the cycle of life - an ancestor
  - Provide sources of mahinga kai
- Tino rangatiratanga
  - Important principle and a leverage point in negotiation for governance

Treaty of Waitangi

- Signed in 1840 with British Crown and Māori chiefs
- Crown viewed signing as an act of cession
  - Unceded?
- Māori believed tikanga would remain as first law
  - Crown authority subject to *tino rangatiratanga*
  - Forced to speak and operate through foreign lexicon and political systems
- Hybrid plan
- Of central importance to political relationships between the Māori peoples and the New Zealand government
Resource Management Act (1991)

- Current judicial water planning framework
- Neoliberal components:
  - Minimize regulation (of land and water resources)
  - Private property
  - Globalization
- Looks to encourage the expansion of the agricultural sector for exports
- Major responsibility for water resource planning delegated to elected councils based on subsidiarity principle
- Māori [governance] constrained
  - Does not define Māori property rights regarding water
Whanganui River Personhood

- Located on North Island running 290 km from volcanic planes through to farmland

- **Deterritorialization** - destroyed conceptual bond between specific groups of people and specific water bodies (Charpleix, 2017)

- Transformation of river from property to legal person
  - Given rights, powers, duties, and liabilities of a legal persons
  - Guardians cannot exclude or charge the public from accessing the river
  - Private property owners around river bed will not be affected by this ruling

*Figure 1. Source: C.MacGregor (Charpleix, 2017)*
“The river is the aortic artery, the central bloodline of that one [Atihaunui] heart.”

- Waitangi Tribunal, 1999, p. 379

For the Te Atihaunui-a-Paparangi, the river nor its people are territory to be owned
Te Waihora

- Located in Canterbury region, South Island
- Low lying with a shallow depth and naturally eutrophic
- Source of *mahinga kai* for Māori Ngai Tahu tribe
- 1840: Ngai Tahu drained lake as maintenance for township and help *mahinga kai* flourish
- 1840: Kemp Purchase
  - Boundaries unagreed upon, subject to Treaty claim

Figure 2. Source: Waitangi Tribunal, 1999
Te Waihora and Joint Management

- Conflict over who should perform day to day management
  - Ngai Tahu vs. Department of Conservation (DoC)
- Treaty of Waitangi Policy Unit
  - First statutory joint land management plant between the Crown and a Māori authority in NZ
    - DoC administers ~35% of total area of Te Waihora and surrounding area
    - Ngai Tahu own and manage the bed of Te Waihora and Te Waimakou
  - 10+ years of negotiation
- Māori role constrained by
  - Property rights
  - Globalization
  - Regulatory environment for management
Property Rights, Globalization, Regulation

- Is legal ownership more significant than management?
- Overriding issue is the intensification of land use for agriculture and the pollution it causes
- Globalization as the driving force behind land intensification
- Exogenous regulations vs. endogenous regulations
References


1. Indigenous of Bolivia
2. Privatization vs Indigenous communities
4. Under the indigenous leadership
Indigenous of Bolivia

- Indigenous Bolivians are a large ethnic group in Bolivia
  - 60% of indigenous population
- Indigenous cosmovision belief
  - Harmony with nature should be prioritized over economic development
  - Water is a sacred entity and the source of life

Introducing in Privatization

● 2 major private concessions:
  ○ La Paz & El Alto to Aguas dellllimani S.A. (AISA), 1997
  ○ Cochabamba to Aguas del Tunari (subsidiary of the multinationals Biwater and Bechtel), 1999

● Purposes to implement privatization
  1) Renegotiate Bolivia’s foreign debt in 1998
  2) Solve the water scarcity issue
  3) Resolve governmental corruption
Impacts

- **Being against the indigenous traditions of self-sufficiency**
  - the southern zone where most of the indigenous working-class population resided in Cochabamba built their own water network.
  - The government gave private companies the right to take over their existing water networks, which led to their bill increasing by 200%.

- **An ideology conflict behind the skyrocketing price of water**
  - The indigenous cosmovision belief from Quechua peoples of the Andes: *Sumac Kawsay* (“well living”)
    - a way of doing things that is community-centric, ecologically-balanced and culturally-sensitive
  - Privatization: managing water under a profit-driven basis
Impacts

- The loss of indigenous community irrigation practices
  - The majority of irrigation systems were built by their users (indigenous communities) that manage their systems using collective control and their own rules.
  - These systems constitute a structural basis to local cohabitation (living together in community).

Water War in Cochabamba, 1999-2000

- A series of protests between 1999 to 2000 that ousted *Aguas del Tunari* from control over the water supply in Cochabamba valley.

- The Water War successfully put the *first Indigenous president* Evo Morale in power, which was a defining moment that has shaped Bolivian politics.

Under the indigenous leadership

Creation of The Ministry of Environment and Water and the Right to Water

“the human right to water and the need to protect water sources and supplies against contamination as well as prohibiting the privatization of water services.”

--the Plurinational Constitution of the state

Towards Legal Title

“Before, the guys with the cash were the presidents. Now, thanks to the unions, to the social movements, we’re in power and we’re in charge.”

- an indigenous farmer from Combuyo, Cochabamba
References


